

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA, ex rel.
JENNIFER DENK,

Plaintiffs,

v.

Civil Action, File No. 09-CV-720

PHARMERICA CORPORATION

FILED UNDER SEAL

Defendant.

UNITED STATES OF AMERICAN,
STATE OF FLORIDA, and
COMMONWEALTH OF MASSACHUSETTS, ex rel.
ERIC BEEDERS and
LESA MARTINO,

Plaintiffs,

v.

Civil Action, File No. 11-CV-706

PHARMERICA CORPORATION as successor
in interest to Integrity Pharmacy Services,

FILED UNDER SEAL

Defendant.

**THE GOVERNMENT'S NOTICE OF ELECTION TO INTERVENE
IN PART AND TO DECLINE TO INTERVENE IN PART**

On August 20, 2011, the Court consolidated the above-captioned cases for pre-trial purposes. Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(2) and (4), the United States notifies the Court of its decision to intervene in part, and decline to intervene in part, in this consolidated case. The United States intervenes in the allegations asserted in *U.S. ex rel. Denk v. PharMerica*, No. 09-CV-720 (“*Denk*”), and the allegations asserted in *U.S. ex rel. Beeders et al.*

v. PharMerica Corporation, No. 11-CV-706 (“*Beeders*”), which contend that Defendant PharMerica Corporation (“PharMerica”) submitted false claims to Medicare for Schedule II controlled narcotic substances that were not eligible for reimbursement because they were dispensed without a valid prescription. The United States declines to intervene in additional claims set forth in the *Denk* action, which contend that PharMerica: (1) submitted false claims to Medicare for Schedule III, IV and V controlled narcotic substances; (2) caused false claims to be submitted by accepting, offering, or giving kickbacks; and (3) caused false claims to Medicare by failing to credit payments for returned medications. The United States intends to file its complaint within 60 days.

Although the United States declines to intervene in a portion of the *Denk* action, we respectfully refer the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the declined portion of the action in the name of the United States; providing, however, that the “action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.” *Id.* Therefore, the United States requests that, should either the relator or the defendant propose that the part of the action in which the United States has not intervened be dismissed, settled, or otherwise discontinued, this Court solicit the written consent of the United States before ruling or granting its approval.

Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings filed in this case, even as to the non-intervened part of this action, be served upon the United States; the United States also requests that all orders issued by the Court be sent to the Government’s counsel. The United States reserves its right to order any deposition transcripts and to intervene in the portion of the *Denk* action in which it is declining to intervene today, for good cause, at a later date.

The United States reserves the right to seek the dismissal of the actions of relator Denk or relators Beeders and Martino or their claims on any grounds, including under 31 U.S.C. §§ 3730(b)(5) and (e)(4).

Finally, the United States requests that the relators' complaints in both the *Denk* and *Beeders* actions and any amended complaints, this Notice, and the attached proposed Order be unsealed. The United States requests that all other papers on file in this case remain under seal because in discussing the content and extent of the United States' investigation, such papers are provided by law to the Court alone for the sole purpose of evaluating whether the seal and time for making an election to intervene should be extended.

A proposed order accompanies this notice.

Dated: May 28, 2013

Respectfully submitted,

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